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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/166024

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 13, 2015, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability, now known as the Office of the Inspector General (OIG) in regard to Medical Assistance (MA), a telephonic hearing was held on June 02, 2015. The record was held open post-hearing to allow petitioner to submit additional information, which was received. The information was forwarded to the OIG for review and comment. The OIG supplied its response to the ALJ and the petitioner by letter dated June 27, 2015 indicating it would award another 187 minutes to the PA, for a total of 50 units weekly.

The issue for determination is whether the OIG correctly modified petitioner's prior authorization (PA) amendment request.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By written submittal of: Kelly Townsend, RN  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is a 47 year old woman whose diagnoses include rheumatoid arthritis, bipolar disorder, hypertension, post-traumatic stress disorder, anxiety disorder, low back pain (lumbago) with sciatica, and degenerative joint disease.
3. On April 17, 2015 the petitioner's PCW provider, [REDACTED], submitted an amendment request for PA# [REDACTED] for PCW services. The amendment request was for an additional 39 units of PCW services weekly in addition to the 56 units granted under the original PA.
4. On April 29, 2015 the OIG issued a notice to petitioner stating that the amendment request was modified to allow a total 37 units per week of PCW services effective June 1, 2015.
5. On June 27, 2015 the OIG provided a response to the hearing documentation submitted by petitioner. The OIG stated it would award a total of 50 units weekly of PCW services effective June 1, 2015.

### **DISCUSSION**

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally as "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. In determining the number of PCW hours to authorize the OIG uses that standard along with the general medical necessity standard found at Wis. Adm. Code, §DHS 101.03(96m). It provides:

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m).

The OIG modified the PA because it determined that the documentation submitted with it did not support the medical necessity of the hours requested. See Exhibit 2. The OIG awarded time for the activities of bathing, dressing upper and lower body, grooming, and services incidental to task with the amendment request. After the hearing, the OIG awarded time for mobility, which in turn increased the amount of the time accordingly for services incidental to task. I agree that the medical information submitted does not show petitioner having the limitations necessary for additional time for medical conditions or behaviors. In reviewing the information submitted by the provider, I can therefore see how the OIG was unable to determine that all of the PCW services requested were medically necessary.

Thus, the problem relates to the fact that the medical necessity for those cares is not documented pursuant to MA rules and policy, which provide:

(3) OTHER LIMITATIONS.

(a) Personal care services shall be performed under the supervision of a registered nurse by a personal care worker who meets the requirements of s. DHS 105.17 (3) and who is employed by or is under contract to a provider certified under s. DHS 105.17.

(b) Services shall be performed according to a written plan of care for the recipient developed by a registered nurse for purposes of providing necessary and appropriate services, allowing appropriate assignment of a personal care worker and setting standards for personal care activities, giving full consideration to the recipient's preferences for service arrangements and choice of personal care workers. The plan shall be based on the registered nurse's visit to the recipient's home and shall include:

1. Review and interpretation of the physician's orders;
2. Frequency and anticipated duration of service;
3. Evaluation of the recipient's needs and preferences; and
4. Assessment of the recipient's social and physical environment, including family involvement, living conditions, the recipient's level of functioning and any pertinent cultural factors such as language.

(c) Review of the plan of care, evaluation of the recipient's condition and supervisory review of the personal care worker shall be made by a registered nurse at least every 60 days. The review shall include a visit to the recipient's home, review of the personal care worker's daily written record and discussion with the physician of any necessary changes in the plan of care.

See Wis. Adm. Code §DHS 107.112(3)(a)-(c)(emphasis added).

I therefore must conclude that the OIG was correct in its modification of the PA request to allow a total of 50 units weekly of PCW services effective June 1, 2015. As in all PAs, the petitioner bears the burden of proving the services she requests are necessary, and that has not been done. Her PCW provider may be able to file yet another amendment to the PA request correcting the problems and explaining more fully the need for the hours. I suggest that the petitioner, her PCW provider, and the medical specialists she sees review her PCW needs and that they provide increased documentation to support a new request for PCW time, if needed. This is not intended to diminish the challenges petitioner faces, but rather to explain that the documentation must be there to support the requested services.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

**CONCLUSIONS OF LAW**

The OIG correctly modified petitioner's PA amendment request to allow a total of 50 units weekly of PCW services effective June 1, 2015.

**THEREFORE, it is**

**ORDERED**

The petition for review is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

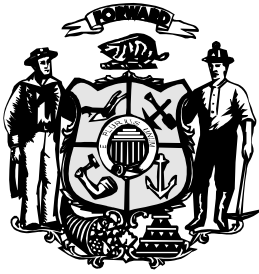
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 7th day of August, 2015

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on August 7, 2015.

Division of Health Care Access and Accountability